

EXHIBIT “M”

Joint Local Rules, S.D.N.Y. and E.D.N.Y.
Effective October 15, 2021

COMMITTEE NOTE

As with Local Civil Rule 83.3, this Local Civil Rule continues to be useful in foreclosure and execution cases.

Local Civil Rule 83.6. Contempt Proceedings in Civil Cases [formerly Local Civil Rule 83.9]

- (a) A proceeding to adjudicate a person in civil contempt, including a case provided for in Fed. R. Civ. P. 37(b)(1) and 37(b)(2)(A)(vii), shall be commenced by the service of a notice of motion or order to show cause. The affidavit upon which such notice of motion or order to show cause is based shall set out with particularity the misconduct complained of, the claim, if any, for damages occasioned thereby and such evidence as to the amount of damages as may be available to the moving party. A reasonable counsel fee, necessitated by the contempt proceedings, may be included as an item of damage. Where the alleged contemnor has appeared in the action by an attorney, the notice of motion or order to show cause and the papers upon which it is based may be served upon said attorney; otherwise service shall be made personally, together with a copy of this Local Civil Rule 83.6, in the manner provided for by the Federal Rules of Civil Procedure for the service of a summons. If an order to show cause is sought, such order may, upon necessity shown, embody a direction to the United States marshal to arrest the alleged contemnor and hold such person unless bail is posted in an amount fixed by the order, conditioned on the appearance of such person in all further proceedings on the motion, and further conditioned that the alleged contemnor will hold himself or herself amenable to all orders of the Court for surrender.
- (b) If the alleged contemnor puts in issue his or her alleged misconduct or the damages thereby occasioned, said person shall upon demand be entitled to have oral evidence taken, either before the Court or before a master appointed by the Court. When by law such alleged contemnor is entitled to a trial by jury, said person shall make written demand before the beginning of the hearing on the application; otherwise the alleged contemnor will be deemed to have waived a trial by jury.

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- (c) If the alleged contemnor is found to be in contempt of court, an order shall be entered
- (1) reciting or referring to the verdict or findings of fact upon which the adjudication is based;
 - (2) setting forth the amount of damages, if any, to which the complainant is entitled;
 - (3) fixing the fine, if any, imposed by the Court, which fine shall include the damages found and naming the person to whom such fine shall be payable;
 - (4) stating any other conditions, the performance of which will operate to purge the contempt; and
 - (5) directing, where appropriate, the arrest of the contemnor by the United States marshal and confinement until the performance of the condition fixed in the order and the payment of the fine, or until the contemnor be otherwise discharged pursuant to law. A certified copy of the order committing the contemnor shall be sufficient warrant to the marshal for the arrest and confinement of the contemnor. The complainant shall also have the same remedies against the property of the contemnor as if the order awarding the fine were a final judgment.
- (d) If the alleged contemnor is found not guilty of the charges, said person shall be discharged from the proceedings and, in the discretion of the Court, may have judgment against the complainant for costs and disbursements and a reasonable counsel fee.

COMMITTEE NOTE

The Committee recommends the deletion of the second sentence of paragraph (c) of this Local Civil Rule on the ground that it is substantive rather than procedural in nature. *See generally Armstrong v. Guccione*, 470 F.3d 89 (2d Cir.), *cert. denied*, 552 U.S. 989 (2007).